

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

PETER PANSE,

Plaintiff,

07-CV-3689 (SCR)

-against-

**DECLARATION IN
SUPPORT**

ENLARGED CITY SCHOOL DISTRICT
OF MIDDLETOWN, New York,

Defendant.

----- X

PETER J. BIGING, ESQ., being duly sworn deposes and says:

1. I am an attorney duly admitted to practice law in the courts of this State and this Federal District, and affirm pursuant to 28 U.S.C. § 1746, under penalties of perjury, that the following is true and accurate to the best of my knowledge and belief:

2. I am a member of the law firm of Lewis Brisbois Bisgaard & Smith, LLP, attorneys for the Defendant Enlarged City School District of Middletown, New York. I submit this Affirmation in support of the Defendant's motion to dismiss the Plaintiff's Complaint on the grounds that (1) it constitutes improper claim splitting resulting in impermissible, duplicative actions, and (2) it fails, in any event, to state a claim for which relief can be granted. I am fully familiar with the relevant facts and circumstances surrounding the subject claim and the instant litigation.

3. Attached are true and correct copies of the following documents:

Exhibit 1: Plaintiff's Complaint filed in this action.

Exhibit 2: Plaintiff's Complaint filed in the related action Panse v. Eastwood, et al., 06 Civ. 6697 (S.D.N.Y.).

Exhibit 3: The December 30, 2006 Opinion and Award of Hearing Officer Joel M. Douglas, Ph.D, in the Matter of the Disciplinary Proceedings of: Board of Education (BOE) Middletown Enlarged City School District and Peter Panse, Respondent, SED File # 5438.

Exhibit 4: Unpublished decisions referred to in Defendant's Memorandum of Law including:

Bartley v. Artuz, No. 95 Civ. 10161, 1999 WL 942425 (S.D.N.Y. Oct. 19, 1999); Dauber v. Board of Education of the City of New York, 2001 WL 1246581 (S.D.N.Y., Oct. 18, 2001); New Phone Co., Inc. v. City of New York, 05-cv-4935, 2007 WL 1452656 (2d Cir. May 17, 2007); Oparaji v. New York City Dep't of Educ., 03-cv-4105, 2005 WL 1398072 (E.D.N.Y. June 14, 2005); Salib v. I.C. System, Inc., 01-cv-1083, 2002 WL 31060368 (D. Conn. July 24, 2002).

Dated: July 9, 2007

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

A handwritten signature in black ink, appearing to read 'P. Biging', is written over a horizontal line.

Peter Biging (PB 9913)
199 Water Street, 25th Floor
New York, New York 10038
(212) 232 -1300
Attorneys for Defendant Enlarged Central School
District of Middletown, New York

TO: Jonathan Lovett, Esq.
Lovett & Gould, LLP
Attorneys for Plaintiff
222 Bloomingdale Road, #304
White Plains, New York 10605